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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

April 4, 2000

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Commissioners  
Federal Election Commission  
999 E. Street, NW  
Washington, DC

MUR 4999

**SENSITIVE**

RE: Complaint against Edward M. Bernstein, A lot of People Supporting Ed Bernstein, Michael M. Kern, Treasurer and Edward M. Bernstein and Associates

Dear Commission:

Pursuant to 2. U.S.C. 437g(a)(1), and upon information and belief, the Republican Party of Nevada brings this complaint to the Federal Election Commission ("FEC") regarding violations of the Federal Election Campaign Act of 1971 (the "Act"), as amended, 2. U.S.C. 431 et seq., by Edward M. Bernstein (the "Candidate" or "Bernstein"), A lot of People Supporting Ed Bernstein, Michael M. Kern, Treasurer (the "Campaign") and Edward M. Bernstein and Associates (the "Law Firm") (collectively the "Respondents").

Respondents are in violation of the Act for coordinating the making and receipt of excessive and prohibited campaign contributions under 2 U.S.C. 441b and failing to report such contributions. The Law Firm has made and continues to make contributions to the Candidate and the Campaign through media advertisements and billboards which are clearly in connection with a federal election.

#### FACTS

The Candidate is the named partner in a Las Vegas based personal injury law firm. The Law Firm is a registered Nevada professional corporation. (see attached) The Law Firm has engaged in media advertisements on television, radio and on billboards around the city over the past several years. Those advertisements stuck to one basic theme: Bernstein speaking directly to the camera, on the radio or his picture on a billboard soliciting business for his Law Firm by urging people who had been hurt to "take the first step."

On October 15, 1999 Edward M. Bernstein filed a Statement of Candidacy and a Statement of Organization with the Federal Election Commission for the office of United States Senate. Thus, on October 15, 1999, Edward M. Bernstein officially filed as a candidate for the office of United States Senate. The Campaign filed its 1999 Year End report with the Secretary of the Senate on February 7, 2000.

24-004-403-397

Around the first of February 2000, the candidate dramatically changed his Law Firm's advertising campaign message. The new advertisements and billboards no longer featured Mr. Bernstein but are testimonials by others about how much "Ed Bernstein Cares". This new message, which is still airing and posted on billboards in the Las Vegas area, outlines how much Candidate cares for the people of Nevada.

On March 13, 2000, Candidate held a press conference in Las Vegas to formally announce his candidacy for United States Senate. This press conference was held at the home of David Emerick, "a man who was severely injured on his job as a maintenance worker three years ago. Bernstein helped Emerick get the medical and Social Security benefits and the worker compensation that he was entitled to." (See attached) Just like the Law Firm's new ads, the theme of his press conference, announcement speech and the platform upon which he based his candidacy was "Ed Bernstein cares."

In the time since his formal announcement, the Law Firm has more than doubled its past television buys with the new advertising message echoing the issues highlighted by the Candidate and his campaign. Further, new billboards are currently on display throughout the Las Vegas area. (see attached).

As President of Edward M. Bernstein, Inc., the Candidate maintains direct control over and has coordinated both the law firm's advertising message and budget and that of his Campaign.

## LAW AND ANALYSIS

Under established Federal Election Commission ("FEC") precedent, a candidate's law firm and his campaign violate federal election law when the law firm runs advertisements controlled by and in coordination with the candidate which echo a theme of the candidate's campaign. If the law firm is incorporated, as in this case, a prohibited corporate contribution will result.

The Act in 2 U.S.C. 441b(a) specifically states:

It is unlawful for...any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section...

For purposes of that section, the Act defines contribution to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value...to any candidate, campaign committee...in connection with any

election to any of the offices referred to in this section... 2 U.S.C. 441b(b)(2).

In 1997 the Commission directly addressed the impermissibility of Respondent's actions here. In MUR 3918 Joel Hyatt for Senate and his law firm, Hyatt Legal Services, signed a conciliation agreement with the FEC admitting violations of federal election law. The FEC found that Hyatt's law firm's payment for ads were excessive contributions to Hyatt's campaign because they echoed Hyatt's campaign themes and the candidate, campaign or campaign consultants were in control of the medium, timing and content of ads were excessive campaign contributions to Hyatt's campaign. The law firm and the campaign agreed to pay a \$11,000 civil penalty for their violations.

In this matter, Candidate's Law Firm's ads have been altered to echo the theme of the Campaign. Further, as Candidate is the president of the Law firm, the direction and coordination of all aspects of the Law Firm's advertisements are under his control.

In MUR 3918, prior to his declaration of candidacy, Hyatt Legal Services aired straight-forward advertisements in which Joel Hyatt personally appeared as the firm's spokesman. In this case, Candidate and Law firm have done the same.

In MUR 3918, Joel Hyatt determined, shortly after declaring his candidacy for U.S. Senate, that his candidacy necessitated changes to the firm's advertisements. He directed that the firm's ads in which he appeared be pulled and replaced with new ones in which he would not appear. Candidate and Law Firm took similar action here.

In MUR 3918, Hyatt's new ads were based on actual client histories from his firm and blended in new public policy themes of health care and crime: two issues which Hyatt and his consultants knew were likely to be raised in the campaign. While the ads were up, health care and crime were raised by Hyatt's campaign. Respondents are doing exactly the same thing.

Because Joel Hyatt controlled the content and themes of the firm's ads which were likely to, and in fact did become campaign issues, the FEC determined the ads were "for the purpose of influencing" Hyatt's election. Further, because the ads were coordinated with Joel Hyatt and paid for by the firm, the value of the ads constituted an excessive contribution from the firm to the campaign committee. The FEC should make a similar finding in this case.

In reviewing the Bernstein Law Firm's new billboards, new television commercials and his announcement speech against the Hyatt case, the only distinction is that in the Hyatt case, Joel Hyatt's firm was not incorporated and thus made excessive contributions. In this matter, the Law Firm is a professional corporation, which made, and Candidate knowingly coordinated and accepted, prohibited corporate contributions.

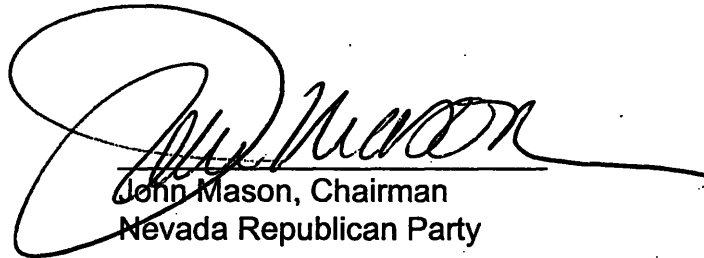
Finally, any argument by Respondents that they have not violated the Act

because the new Law Firm ads do not contain "express advocacy" will be unavailing. As the United States District Court ruled in FEC v. Christian Coalition, "surely a corporation that writes a communication 'for the purpose of influencing a federal election' in concert with a candidate's campaign can be held civilly liable for making an illegal in-kind contribution even when that communication does not contain 'express advocacy'." FEC v. Christian Coalition, Civil Action No. 96-1781 August 2, 1999.

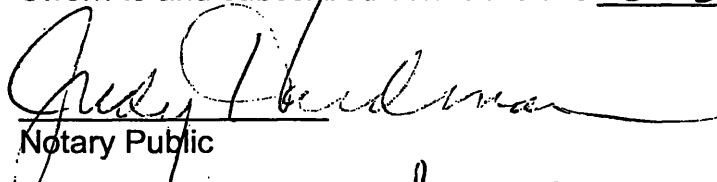
## CONCLUSION

Respondents have violated and continue to violate the Act through the airing of Candidate's Law Firm ads which carry his Campaign message to the voters of Nevada, paid for with prohibited corporate funds. The Commission should conduct a prompt and complete investigation to determine the scope of the past and continuing violations and seek immediate injunctive relief to eliminate the on-going violations of the Act. Further, the undersigned asks the Commission to take appropriate steps to remedy all violations of the Act.

Respectfully submitted,

  
John Mason, Chairman  
Nevada Republican Party

Sworn to and subscribed before me this 5th day of April, 2000.

  
Notary Public

My Commission Expires: Sept. 24, 2000



In similar matters, the FEC addressed in Advisory Opinions 1990-5 and 1990-9 a candidate for the U.S. House's ability to continue to publish a newsletter from a corporation, and then sole proprietorship, of the candidate. The newsletter addressed different issues of public concern and included articles on miscellaneous topics. The Commission concluded that the expenses for publication and distribution would be considered expenditures if (1) direct or indirect reference is made to the candidacy, campaign or qualifications for public office; (2) articles or editorials are published referring to the candidate's views on public policy issues, or those of her opponent, or referring to issues raised in the campaign, whether written by the candidate or someone else; OR (3) distribution of the newsletter is expanded significantly beyond its present

audience, or in any manner that otherwise indicates its utilization of the newsletter as a campaign communication. In this case, the advertisements refer to the Candidate's character – a key issue in the 2000 elections, the advertisements refer to issues raised in and by the campaign, and the ads have changed in such a manner as to indicate their utilization in connection with a federal election.

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